

STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION MEETING
BURBANK, CALIFORNIA
NOVEMBER 29, 2006

Attendees: William Zachry, Chairperson, and Commission Members Donna Gallagher, Carol Schatz and Jiles Smith.

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch; Rick Plein, Fraud Division Bureau Chief, Workers' Compensation, and Vanessa Himelblau, Senior Staff Counsel, CDI Legal Division.

Chairperson Zachry called the meeting to order.

Motion

Commission member Jiles Smith made the motion to approve the December 14, 2005 meeting minutes.

Commission member Carol Schatz seconded the motion.

Action

The motion passed unanimously.

Motion

Commission member Gallagher made the motion to approve the meeting minute's summary for January 18, 2006.

Commission member Schatz seconded the motion.

Action

The motion passed unanimously.

Motion

Commission member Gallagher made the motion to approve the meeting minute's summary for June 20, 2006.

Commission member Schatz seconded the motion.

Action

The motion passed unanimously.

Christine Baker, Executive Director for the California Commission on Health and Safety and Workers' Compensation (CHS&WC) and Dr. Lachlan Taylor presented a progress report on the department and Fraud Assessment Commission's research study of underpayment and overpayment in the Workers' Compensation system.

The research study proposes several issues such as developing the research process, finding the source for the random selection of claims and the issue of confidentiality.

Chairperson Zachry commented that the Insurance Rating Bureau and State oversight have also enlightened everyone involved in this project. "I think the specific example that was raised in the process that we were going through was when treatments are denied through utilization review. There really isn't a system out there that then captures the data on that denial necessarily because the event then did not take place," stated Zachry.

Christine Baker reported that CHSWC has several studies underway: Uninsured, Premium Fraud, and the Underground Economy. Several other issues have been identified that the FAC may want to include in future plans. The process is very difficult and may require additional resources to determine the extent to which treatment is denied and/or provided unnecessarily.

Judge Lachlan Taylor commented that the Commission may want to have a study conducted on plan's administrator's misconduct which prevents the reporting of compensable claims.

Commissioner Gallagher raised the issue as to the estimated cost for an additional study.

Although no one knows exactly what the costs would be, the estimate at this point is around \$1 million to \$1.5 million.

Commission member Smith raised the issue as to when the FAC can anticipate the conclusion of the studies currently being conducted by CHSWC. Ms. Baker noted that the hope was to have the final product by the end of this year.

Commissioner Gallagher reported that she represented the FAC at the California District Attorney Association (CDAA) Annual Training Fraud Seminar. During one of the training presentations, advertisements on fraud and fraud awareness were shown by the Coalition Against Insurance Fraud.

Following some discussion, Chairperson Zachry offered to raise this issue with the newly elected Insurance Commissioner.

Commissioner Gallagher invited Rick Plein, Bureau Chief and Gary Fagan, Chair of the CDAA Insurance Fraud Sub-committee to join her to report on the progress of the Workers' Compensation Application revision meetings.

Mr. Fagan reported that the working group spent time developing a more cohesive and clear application that should provide the Review Panel with some intelligent way of assessing a county program. "If it wasn't required by the statute or if it wasn't addressing a specific need that the review panel had, we tossed it out," remarked Fagan.

Bureau Chief Plein noted that the format had been revised as it was somewhat cumbersome to follow. Additionally, the department developed computer program reporting for district attorneys that can be utilized by each county through a web site. Bureau Chief Plein remarked, "As long as we continue to communicate and keep moving forward, I think we will have a product that is a benefit to the district attorneys, the department and the FAC".

Commissioner Gallagher noted that the year-long working group had been excellent. "Everybody seems to be in agreement that if we did certain things, we could really change the impact of this program in California," stated Gallagher. "This program needs to have an overall mission statement that we really need to be in alignment with what it is we want to accomplish," remarked Gallagher.

Chairperson Zachry asked for a mission statement to be presented at the next meeting. Chief Banda raised the issue that the newly elected Commissioner may be reforming the Workers' Compensation Advisory Committee and that might be the place to raise issues such as outreach, the mission statement, and strategic planning.

Deputy Commissioner Banda acknowledged that the department would work on the mission statement with CDAA.

Chairperson Zachry moved the discussion to legislative proposals for 2007. The FAC knows of two concepts: 1) wobbler language to change the status of the 3700.5 to a wobbler, and (2) an ultimate felony/misdemeanor to give some economic balance to those prosecutions. Zachry thanked Dominic Dugo, San Diego County, for the proposed legislative language.

The next legislative issue raised by the FAC is the automatic loss of a professional license when a doctor or lawyer commits and/or is convicted of workers' compensation insurance fraud.

Eric Von Geldern, Alameda County commented on the issue of discovery. He proposed clean up legislation to remove the word "provide" and insert the word "discovery" in the specific place in the statute where the change was overlooked. The second issue is the statute of limitation requirements. The current language is most likely an oversight that could potentially hurt many of our cases. Therefore, we are working on these two issues.

Motion

Commissioner Schatz moved that these four issues be brought to the Legislature for review.

Action

Commissioner Jiles Smith seconded the motion.

The motion passed unanimously.

Chairperson Zachry shared information regarding the pharmacy repackaging of drugs. The pharmacy fee schedule is tied into the Medi-Cal pharmacy rates and usually does not cover the national drug center for repackaged pharmacy goods.

“If a company repackaged drugs into a smaller or different package, they could set their own national drug center code and their own average wholesale price,” remarked Zachry. There are upwards of \$500 million of additional costs in the system because of this practice. The Division of Workers’ Compensation is preparing regulations to help stop this abuse.

Chairperson Zachry reported on his ongoing participation in the Watsonville Law Center enforcement collaboration process. During these meetings, Mr. Zachry has learned what is and what is not working in the workers’ compensation process. “I was under the impression that the Uninsured Employers Fund was a wonderful safety net for the employees who got injured on the job and whose employers did not have workers’ compensation insurance,” stated Zachry. The reality is that from the date of injury while employed by uninsured employers to the first provision of benefits, two years have past.

Commissioner Gallagher raised the question as to what will result from gathering this information.

Chairperson Zachry commented that some recommendations would be forthcoming from the working group to the appropriate entity such as the Insurance Commissioner or the Commission or the Legislature.

Michael Gross, Santa Cruz Deputy District Attorney, remarked that the working meetings in Watsonville have been a tremendous learning experience. One of the complexities of the situation is that you are dealing with immigration issues and politics.

Anne Horelly, a defense attorney in the workers’ compensation arena in California, addressed the Commission on the issue of the Uninsured Employers Fund. In terms of delays in the process, the identification of the employer can attribute to setbacks. For example, if a comma is missed in the name, the system will kick it back. The three main entities in the process are the employer, the Uninsured Employers Fund and Workers’ Compensation Insurance Rating Bureau. “But I think there has to be perhaps some sort of a penalty to the employer who does not voluntarily provide their insurance information to the injured worker,” stated Horelly.

Chairperson Zachry commented that the FAC would look into these issues and report back at the next meeting.

District Attorneys

Chairperson Zachry noted that the FAC has already reviewed the prospective budgets, and therefore, is requesting that district attorneys specifically address why there may be a difference between last year's funding award and this year's funding request.

The following counties presented prospective budget requests for the upcoming fiscal year in order to maintain service and staffing levels with the customary added cost of living increases.

Alameda

Butte

Fresno

Kings

Los Angeles

San Diego

San Francisco

Santa Clara

Santa Cruz

Tulare

Yolo

Not Present:

San Joaquin, San Mateo

Amador, Placer and Calaveras

Armando Zambrano, Deputy District Attorney, reported on behalf of Amador, Placer and Calaveras Counties and requested increase support due to salary increases of 25 percent to district attorney investigators. The program will be adding one more full-time investigator. Finally, the program is currently working on a more complex investigation with the Department of Insurance involving medical provider fraud.

Contra Costa

Edward Dang, Deputy District Attorney, requested an increase for the County in order to add two full-time attorneys and provide a joint outreach effort with Marin County.

Kern

Michael Gutstein, Deputy District Attorney reported that Kern is requesting an increase based on several reasons. Kern is the third biggest county in California and the fourth county in the state with regards to growth. The county's workforce has dramatically increased. He requested funding to add one permanent investigator. Kern is in the process of filing a very complex case which involves applicant fraud, employer fraud, health provider and tax fraud. Kern is also a part of the San Joaquin Valley Premium Fraud Task Force.

Monterey

Edward Hazel, Managing Deputy District Attorney, reported that Monterey County was requesting a funding increase to expand their outreach program to labor unions, farm workers and medical providers to inform employers that they must carry workers' compensation insurance and that the injured worker is entitled to benefits.

Orange

Dennis Bauer, Deputy District Attorney, commented that the County request was for contract increases, merit raises and also for additional personnel. Orange County has presented two all-day seminars outreaching to insurance representatives, SIU's and other stakeholders. Also, a one-day conference was presented in conjunction with the Employers Fraud Task Force and the Department of Insurance. Orange County believes they could dedicate one full-time attorney to do outreach.

Riverside

Vicki Hightower, Deputy District Attorney, reported that their funding increase request was due to the expanding population and the County's focus on premium fraud cases. Riverside continues to be active in the Workers' Compensation Consortium with the Department of Insurance and the Employer Fraud Task Force.

San Bernardino

Gary Fagan, Supervising Deputy District Attorney, reported on the workers' compensation projected budget. Currently, San Bernardino has a very large \$39 million premium fraud case with eight defendants being litigated. The Department of Insurance may possibly pick-up expenses totaling \$200,000 for discovery in this case.

Mr. Fagan requested a need for additional funding in order to hire an attorney to cover other cases and a technician to help with litigation support. There will also be increases due to mandated COLA's and salary adjustments.

Santa Barbara

Jeff Fredericks, Senior Criminal Investigator, noted that Santa Barbara is considering adding a part-time person to handle restitution and purchasing equipment and supplies. They are trying to modernize and update their ability to provide discovery on criminal cases being filed.

Sonoma

Amy Ariyoshi, Deputy District Attorney, Sonoma County, requested an increase in funding in order to enhance the number of investigations, collect restitution and provide community outreach.

Stanislaus

Colleen Rhodes, Stanislaus County, Deputy District Attorney addressed the FAC. Ms. Rhodes was just assigned to the workers' compensation program area. Also, there is a new investigator in the program. The County plans to reach out to the three largest employers and provide training. The County attended the California District Attorney Association (CDAA) annual training and believes they learned a great deal. Also, Stanislaus contracts with Doctors Medical Center and plans to provide outreach to them.

Tulare/Central Valley Premium Fraud Task Force

Fresno, Kings, Merced, Kern

Bill Yoshimoto, Supervising District Attorney, Tulare County, reported that all the counties in the Central Valley Premium Fraud Task Force must maintain their funding levels with slight increases to meet the cost of living changes.

Mr. Yoshimoto reported on the accomplishments of the Task Force for the past year. Together they have investigated a total of 25 premium fraud cases. Of the 25 cases, 14 cases are still under investigation, four are in court and 2 have been closed by conviction. Kings County received full cash restitution in closing that conviction. Additionally, two cases were closed due to insufficient evidence and one was closed because of the death of the suspect.

Both Fresno and Tulare Counties are close to filing premium fraud cases. The valuation of the cases worked in the Task Force so far, has exceeded \$7 million.

Ventura

Thomas Frye, Deputy District Attorney, Ventura County, stated that Ventura was requesting a funding increase to bring a part-time investigator on board. The county is working on two large premium fraud cases which will begin litigation this upcoming fiscal year. Also, with the 3700.5 program, filings have increased and premium fraud cases are rising as a result. Additionally, the county anticipates more provider fraud cases. Mr. Frye just prosecuted a chiropractor who received 365 days in jail and provided a check in the amount of \$500,000. Along with restitution, a little over \$100,000 should be going to the Workers' Compensation Fund.

California District Attorney Association (CDAA)

Gary Fagan, Chair of the Insurance Fraud Sub-Committee for CDAA, remarked that each year, the district attorneys present to the FAC their prospective workers' compensation program budgets for the upcoming fiscal year. "I believe that my colleagues, when they submit their budgets to you now, have made a good faith estimate of what the actual costs of their program are," stated Fagan.

The district attorneys funding requests totaled \$46.7 million. Mr. Fagan urged the Commissioners to fund at least that amount. If the assessment to employers and the self-insured was increased by \$1.00, that would equate to about \$70 million to cover the programs.

Fraud Division

Dale Banda, Deputy Commissioner, Enforcement Branch, Fraud Division, reported that he had met with Insurance Commissioner-Elect Poizner. Deputy Commissioner Banda briefed the newly elected Commissioner on the Fraud Division's strategic plan for the upcoming fiscal year 2007-08. He also expressed what the Fraud Division funding request would be and described the process required for filling vacancies. Commissioner-Elect Poizner agreed with the information provided by Deputy Commissioner Banda.

Deputy Commissioner Banda outlined what he believes are the six components necessary to have a successful anti-fraud program. The first component is a strategic plan with objectives and initiatives. In other words, where are you going and how do you plan on getting there.

The second component is effective leadership and training. The program becomes successful when the Chief Investigator in the Fraud Division and the Supervising District Attorney have open communication.

The third part of a successful anti-fraud program is an aggressive outreach program. We need to utilize various ways to bring the information to everyone.

The fourth component is partnership with key stakeholders. Since the beginning of the Workers' Compensation Program, the Department has encouraged involvement of many state agencies and other local law enforcement. It is very important to maintain these partnerships and liaisons.

Effective trend analysis is the fifth component needed for a successful anti-fraud effort. We need to identify the trend and get ahead of that trend instead of behind the trend. A more proactive approach is needed to curtail crime.

The final component is to maintain a balanced caseload, which still includes claimant fraud to investigate and prosecute in order to have a successful anti-fraud program.

Deputy Commissioner Banda next commented on what determines successful outcomes. The first one is criminal prosecution or conviction.

The second outcome is civil litigation. The department has been involved in Qui Tams which are civil actions.

The third outcome is to conduct an investigative inquiry. This is the lowest form of investigation as it may only be a phone call from law enforcement or a district attorney's office to get the attention of a would-be fraudster. However, this may result in a confession or an individual "rolling over" on another person.

The fourth outcome of a successful anti-fraud program is accountability. The Bureau of State Audits Report listed twenty recommendations. The department has addressed all the findings by compliance or by establishing a process and moving those issues forward.

The department, together with the district attorneys and the FAC, made funding changes in the workers' compensation program regulations. For the past year and under the direction of Bureau Chief Rick Plein, the working group, including a FAC representative, district attorneys and the department, re-evaluated and made changes to the Request For Application.

The department has a regulatory obligation to audit the grant-funded counties and the industry to make sure that finances are being appropriately utilized and that education and training have been provided to the industry in matters of identification and referrals.

The fifth outcome is consistency in leadership and support. It is very important that the district attorneys and the Fraud Division work cooperatively statewide. "That will, in my opinion, bring consistency to the program as well," stated Deputy Commissioner Banda.

The department has made many revisions and enhancements to the public web site. Today, the web site is easier to navigate and more people friendly. In the workers' comp arena, one can locate regulations and legislation pertaining to the program.

Chair Zachry raised the issue as to whether or not the department was receiving minute orders on convictions from the district attorneys. Bureau Chief Plein commented that the department had not yet requested submission of the documents from the district attorneys, but he would be working on the issue with the DAs.

Deputy Commissioner Banda noted that fines from uninsured employers were now being directed to the Workers' Compensation Fraud Account. The department did not know exactly how much had been deposited, but the information can be secured.

Deputy Commissioner Banda reported that the department was seeing a steady increase in suspected fraudulent claims (sfcs) for the last three to four years. Further, many suspected fraudulent claims are now being submitted

electronically. One of the issues being received is that about 40% of all sfcs being submitted to the Division have errors.

Chair Zachry raised the issue as to whether or not a listing could be compiled depicting the top 20 percent of the errors submitted. Perhaps the information could be posted on the public web-site in order to increase the quality and assist in improving the SIUs. Deputy Commissioner Banda remarked that he thought the error information for suspected fraudulent claims could be gathered rather quickly.

Discussion continued and Chair Zachry raised the issue as to whether or not the results of SIU audits being performed on insurance carriers are public information.

Deputy Commissioner Banda acknowledged that he would have to check with the Legal Division regarding whether or not this information can be made public.

Deputy Commissioner Banda commented another issue that has not yet been discussed with the Insurance Commissioner is examining self-insured and the requirements for having SIU's. This is a legislative proposal being discussed because if you are acting as a self-insured, you are taking all the privileges of an insurance company but yet don't fall under the oversight of the Department of Insurance.

Commissioner Gallagher remarked that carriers are measured by the responsibility to report and self-insureds share in that statute.

Deputy Commissioner Banda described the criteria for compliance of a good SIU. These identifiers are used when audits are performed. "We are trying to get the insurance company committed, not compliant," remarked Banda.

Commissioner Smith raised the issue of third-party administrators and whether they are being audited as well.

The department does not have oversight of TPAs. They are statutorily required to report fraud but the department does not have the oversight or "the hammer" to pursue them for non-compliance.

Deputy Commissioner Banda continued with a discussion on grant funded county audits. "One of the issues in counties used to be inadequate tracking of time and that seems to be getting better" noted Banda.

The report from the Fraud Division to the FAC continued and Deputy Commissioner Banda noted that the department's Legal Branch provides extensive work. In fact, the legal branch monitored 30 Qui Tams and half of those were workers' compensation related.

Senior Legal Counsel provided the FAC with an understanding of a Qui Tam. "Qui Tam is a civil action that is brought by a third party on behalf of the state. Usually you have these types of statutes when you have a type of crime that a government agency generally doesn't go after or prosecute because it's labor intensive," stated Himelblau.

Deputy Commissioner Banda continued and advised the FAC on the Strategic Fraud Division Plan whose objective is to reduce instances of employer misrepresentation.

The Fraud Division next looks at the return on investment. "The case investigations must be cost-effective and have successful outcomes," noted Banda. There are times that the cases aren't cost-effective because public safety issues come into play. "I think it is important to know that public safety will be coming first," stated Banda.

Deputy Commissioner Banda reported that for the Workers' Compensation Program, 574 arrests were made (31 percent increase from last fiscal year) and convictions totaled 464 (10% increase from the previous fiscal year). For fiscal year 2005/06, for every dollar invested, there was \$4.9 in chargeable fraud.

Deputy Commissioner Banda informed the FAC that with the number of suspected fraudulent claims that were closed out due to lack of resources, the statistics show (if you look at 2005/06 with actual personnel years of 101), the Fraud Division would have needed an additional 57 PYs or positions to address the number of suspected fraudulent claims that were closed.

Discussion followed and Deputy Commissioner Banda remarked that Commissioner-elect Poizner indicated one of his platform agendas was to fill vacancies in the Fraud Division. Currently, 24 positions are in background. "I am planning on filling all vacancies by next December", stated Banda.

Additionally, Deputy Commissioner Banda noted the Fraud Division needed to commit investigators, to work with California District Attorney Association (CDAA) on their annual training workshop.

Another area Fraud Division will be working on is cooperation between the first line supervisor and the Supervising DA to ensure a credible, reasonable and complete investigative plan. One of the components being addressed in Regional Offices is dedicated workers' compensation personnel.

Commissioner Schatz raised the issue of the amount of funding being requested by the Fraud Division. After providing a detailed account of the Fraud Division's rationale for the needed funding increase to the FAC and having no further issues before the Commission the Fraud Division concluded their report.

Chairperson Zachry announced that public comment would now be accepted. No public comment was made.

The FAC gave their opinions, ideas and observations of the overall program. The idea of dedicated investigative resources to specific district attorneys and the need to have a complete investigation plan prior to spending time and expense on investigations, should provide a more effective use of the funds. The Commission commented on district attorney offices providing full-time personnel for a more effective program. Furthermore, the Commission was pleased with the various task forces and the combining of resources in the smaller counties and encouraged that kind of activity. The outreach to the county hospitals and follow through by Santa Clara was a great idea and the Commission encourages others to follow that action.

The compliance to the State Audit by going forward with the research study is another important component in the Workers' Compensation arena. Also, California Commission on Health & Safety and Workers' Compensation is going forward on studies involving premium fraud, the uninsured employers and the underground economy.

There was some discussion on the issue that the California employer pays the highest workers' compensation rates in the country. This fact has driven many businesses out of California. Therefore, another dollar per \$1,000 in premiums is a big price for employers to pay.

Commissioner Gallagher requested legal clarification on whether or not the aggregate funding must be distributed within that year.

Vanessa Himelblau, Senior Legal Counsel provided information based on Insurance Code Section 1872.83, subsection C that specifically states:

“Any fund appropriated to subdivision B that are to be expended in the fiscal year and that have not been allocated under subdivision F shall be applied for the following fiscal year.”

Motion

Commissioner Gallagher made the motion to allocate to the Department of Insurance \$19 million and \$160,000 for incidental expenses, plus \$60,000 for maintaining and continuing to improve the database for the District Attorneys and the FAC web site. Additionally, \$750,000 is to be put aside for furthering our studies, with a caveat that the FAC does not go forward until they are sure they are receiving what they anticipated from the study. Therefore, the total allocated to the department is \$19,970,000.

The District Attorneys are to be allocated \$25 million (if appropriate for distribution). The total expendable would then be \$44,970,000. This amount is to be offset by \$1,082,767 which is available from the Workers' Compensation Fraud Account.

The collectible totals \$43,887,233.

Action

The motion was seconded by Commissioner Schatz and the motion passed unanimously.

The last action of the FAC was the recognition of Commissioner Donna Gallagher for her years of dedication and commitment to the program and fight against workers' compensation insurance fraud. Chairperson Zachry commented that it was with great sadness that we watch Commissioner Gallagher move into retirement. She has been with the Commission from the beginning and was the institutional memory for the Commission. Chairperson Zachry remarked that it would be wonderful if Donna could serve as the independent criminal specialist on the department's Review Panel this coming summer. “There is truly nothing I can adequately say about Donna that would

express what she has brought to fighting fraud in California and this group,” remarked Zachry.

The Commission recognized Darlyn Regan, Fraud Program Manager at State Compensation Insurance Fund as the newest representative on the FAC.

The meeting adjourned at 4:06 p.m.